

FOREIGN RELATIONS

182

branch banking assets owned by defendant in its own right where there were three State Department communications pertinent to the Executive Branch's view that the act of state doctrine should not be applied, no showing was made that the adjudication of the counterclaims would interfere with foreign relations of the United States, and counterclaims did not exceed the value of the claims brought against the defendant by the Cuban state-owned bank. *Banco Nacional de Cuba v. Chase Manhattan Bank*, C.A.N.Y.1981, 658 F.2d 875.

Sugar brokerage company was not entitled as assignee to raise Cuban government's seizure of assignor's Havana assets as a counterclaim or setoff against broker's debt owed to Cuban governmental entity under sugar contract where seizure of assignor's Havana offices and accounts was carried out pursuant to a formal resolution issued by minister of labor, who was acting on behalf of the sovereign Cuban government, in that such seizure was an "act of state," and the act of state doctrine barred sugar broker's counterclaim or setoff. *Empresa Cubana Exportadora De Azucar y Sus Derivados v. Lamborn & Co., Inc.*, C.A.N.Y.1981, 652 F.2d 231.

Subsec. (e)(2) of this section, which mandates that no court may decline on ground of act of state doctrine to make determination on merits in case in which claim is based upon confiscation or other taking by an act of that state in violation of principles of international law, did not apply to prevent application of act of state doctrine to bar suit by American investors against Mexican bank, which issued certificates of deposit and then subsequently breached its contractual obligation to repay the deposits and any interest due in United States dollars based on governmental decree flatly prohibiting use of dollars as legal tender, as legality of such foreign exchange controls is widely accepted by authorities on international law. *Braka v. Bancomer, S.A.*, D.C.N.Y.1984, 589 F.Supp. 1465, affirmed 762 F.2d 222.

12a. — Waiver

Letter that Mexican natural gas purchaser received from the Mexican government allowing it to prosecute causes of action "before any authority, whether it be National or Foreign," did not constitute a waiver of the act of state defense by the Mexican government; rather, it merely allowed the natural gas purchaser to pursue claims which might otherwise have been foreclosed by the Mexican government's order placing the natural gas purchaser into receivership. *Compania de Gas de Nuevo Laredo, S.A. v. Entex, Inc.*, C.A. Tex.1982, 686 F.2d 322, certiorari denied 103 S.Ct. 1435, 460 U.S. 1041, 75 L.Ed.2d 794.

15. Jurisdiction

Statute providing, inter alia, that notwithstanding any other provision of law, no court shall decline on ground of federal act of state doctrine to make a determination on merits giving effect to principles of international law in a case in which a claim of title or other right to property is asserted by any party, including a foreign state based upon a confiscation or other taking by an act of that state in violation of the principles of international law did not provide a jurisdictional basis for suit against the Republic of Venezuela for impounding certain of plaintiffs' property, as the Foreign Sov-

183

FOREIGN RELATIONS

reign Immunities Act alone confers the district courts with subject matter jurisdiction in actions against foreign states. *National Expositions, Inc. v. DuBois*, D.C.Pa.1985, 605 F.Supp. 1206.

18. Remand

Justiciability of counterclaim with respect to the Cuban government's expropriation of subject corporation, as an offset to plaintiff's claims as a successor in interest for amounts deposited with defendants by private Cuban banks prior to their nationalization, could not be determined absent a remand of case for consideration of issues whether the Executive Branch had provided a Bernstein letter advising the courts that it believed that the act of state doctrine need not be applied. *Banco Nacional de Cuba v. Chemical Bank New York Trust Co.*, C.A.N.Y.1981, 658 F.2d 903.

19. International Security and Development Act

International Security and Development Act of 1981, set out as a note under this section, specifically authorizing economic and military assistance to El Salvador, including assignment of members of armed forces to El Salvador to carry out functions under Foreign Assistance Act of 1961, section 2151 et seq. of this title, or Arms Export Control Act, section 2751 et seq. of this title, did not amount to specific authorization as required under War Powers Resolution, section 1541 et seq. of Title 50, where it did not specifically authorize introduction of armed forces into hostilities or situations of imminent hostilities and did not state that it was intended to constitute specific statutory authorization. *Crockett v. Reagan*, D.C.D.C.1982, 558 F.Supp. 893.

§ 2371. Prohibition on assistance to countries supporting international terrorism

(a) Covered programs; Presidential determinations

The United States shall not provide any assistance under this chapter, the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C.A. § 1691 et seq.], the Peace Corps Act [22 U.S.C.A. § 2501 et seq.], the Export-Import Bank Act of 1945 [12 U.S.C.A. § 635 et seq.], or the Arms Export Control Act [22 U.S.C.A. § 2751 et seq.], to any country which the President determines—

- (1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or
- (2) otherwise supports international terrorism.

(b) Waiver of determinations

The President may waive the application of subsection (a) of this section to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of the waiver (including the justification for the waiver) in accordance with the procedures applicable to reprogramming notifications pursuant to section 2394-1 of this title.

(c) Imposition of sanctions by other countries

If sanctions are imposed on a country pursuant to subsection (a) of this section because of its support for international terrorism, the President should call upon other countries to impose similar sanctions on that country.

(As amended Pub.L. 99-83, Title V, § 503(a), Aug. 8, 1985, 99 Stat. 220; Pub.L. 99-190, § 101(i) [Title V, § 521], Dec. 19, 1985, 99 Stat. 1305.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764, 462 U.S. 919, 77 L.Ed.2d 317. See similar provisions in this section.

References in Text. The Agricultural Trade Development and Assistance Act of 1954, referred to in subsec. (a), is Act July 10, 1954, c. 469, 68 Stat. 454, as amended, which is classified principally to chapter 41 (section 1691 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables volume.

The Peace Corps Act, as amended, referred to in subsec. (a) is Pub.L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (section 2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables volume.

The Export-Import Bank Act of 1945, referred to in subsec. (a), is Act July 31, 1945, c. 341, 59

